

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3089 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SANATKUMAR JAYANTILAL PANDYA

Versus

DISTRICT MAGISTRATE KHEDA

Appearance:

MR ANIL S DAVE for Petitioner
MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

2. The petitioner challenges the order of preventive
detention dated 8th December, 1998 made by the District

Magistrate, Kheda under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are considered to be prejudicial to the maintenance of 'public order'. Three offences punishable under the Bombay Police Act are registered against the petitioner and are pending trial. The witnesses have given statements in respect of incidents which occurred on 31st January, 1998, 3rd February, 1998, 2nd February, 1998, 1st February, 1998, 10th August, 1998, and 12th August, 1998, and its effect on the public tranquillity and even tempo of life.

4. The only ground on which the impugned order is challenged is : there is an inordinate delay in taking action against the petitioner under the Act. The said delay has snapped the link between the cause of action and the action. The action taken under the Act is, therefore, vitiated. It appears that the above referred offences were registered against the petitioner on 3rd July, 1997, 27th October, 1997 and 7th June, 1998. In respect of the last of the offences, the petitioner was arrested and released on bail on 7th June, 1998. The statements of witnesses were recorded on 31st January, 1998, 1st, 2nd & 3rd February, 1998 and 10th & 12th August, 1998. The said statements have been verified by the superior police officer on 20th February, 1998 and 18th September, 1998 respectively. Hence, it is apparent that on 7th June, 1998, when the petitioner was arrested in respect of the last of the offences, sufficient material was gathered by the sponsoring authority against the petitioner, however, no action was initiated against the petitioner and further material was collected in the month of August, 1998. Thereafter also, the impugned order has been made after a long delay of nearly 4 months. This inaction in initiating action under the Act is sufficient to vitiate the order of detention. This long delay in taking action, even after the materials against the petitioner were collected, has not been explained by the respondents-authorities.

4. Petition is, therefore, allowed. The impugned order dated 8th December, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash*